

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
ILLINOIS WESTERN DIVISION**

KENNETH HOUSENGA, as Administrator of  
The ESTATE OF JODI L. HOUSENGA,  
Deceased, and KENNETH HOUSENGA,  
Individually,

Plaintiff,

V.

Case No. 22 cv 3887

UNION PACIFIC RAILROAD COMPANY,  
a Delaware Corporation

Defendant.

## NOTICE OF REMOVAL

Defendant Union Pacific Railroad (“Union Pacific”), by and through its undersigned counsel, submits its Notice of Removal to the United States District Court for the Northern District of Illinois, Western Division, pursuant to 28 U.S.C. §§ 1332 and § 1441, and states as follows:

1. On June 15, 2021, Plaintiff, Kenneth Housenga, commenced this action against Union Pacific in the Circuit Court of Whiteside County, Illinois Cause No. (2022LA21). A true and correct copy of the Plaintiff's Complaint ("Complaint") is attached as Exhibit A. He has filed this action individually, and as Administrator of the Estate of Jodi Housenga, his deceased wife ("Decedent").
2. Plaintiff claims that on June 17, 2019, Decedent was on the property of Union Pacific, and that due to the negligence of Union Pacific, Decedent was struck by a felled cottonwood tree that resulted in her death. *See* Complaint generally. Plaintiff makes claims under the Illinois Wrongful Death Act, the Survival Act, and a claim of negligent infliction of emotional distress.

3. This Court possesses diversity jurisdiction over the cause of action pursuant to 28 U.S.C. §§ 1332 and 1441 as there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00.

**A. Diversity of Citizenship Exists:**

4. Diversity of citizenship exists if the controversy is between “citizens of different states.” 28 U.S.C. § 1332(a)(1).
5. Plaintiff is a citizen of the State of Illinois. *See* Exhibit A ¶ 2, and p. 16, Letters of Office attached to Complaint; 28 U.S.C. § 1332(c)(2), *Yarber v. Mehta*, No. 06-CV-1018-JPG (S.D. Ill. Apr. 18, 2007) (the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same state as the decedent).
6. Union Pacific, as a corporation, is “deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. 1332(c)(1). Union Pacific is incorporated under the laws of Delaware and its principal place of business is in Nebraska. As such, Union Pacific is a citizen of Delaware and Nebraska.
7. Here, as Defendant is not a citizen of the same State as the Plaintiff, complete diversity of citizenship exists. 28 U.S.C. § 1332.

**B. The Amount-In-Controversy Requirements is Satisfied:**

8. A notice of removal may be filed within thirty days after receipt by the defendant of a writing from which it may be first ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). This Notice is being filed within 30 days of Union Pacific having ascertained that the amount-in-controversy exceeds \$75,000.00.

9. Ordinarily, “the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy,” unless the state does not permit a demand for specific recovery when the pleading seeks a money judgment. 28 U.S.C. § 1446(c)(2)(A)(ii).
10. The Supreme Court has clarified that a defendant seeking removal to federal court need only include in the notice of removal a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. See *Dart Cherokee Basin Operating Co. v. Owen*, 135 S. Ct. 547, 554 (2014). The district court should consider outside evidence and find by a preponderance of the evidence whether the amount in controversy is satisfied “only when the plaintiff contests, or the court questions, the defendant’s allegation.” *Dart Cherokee Basin Operating Co. v. Owen*, 135 S. Ct. at 554.
11. In this case, Plaintiff has filed a three-count Complaint. In the prayer for relief at the conclusion of each count, Plaintiff pleads that he is entitled to an amount in excess of \$50,000.00. Therefore, the face of Plaintiff’s Complaint seeks an amount in excess of \$150,000.00. Exhibit A. Furthermore, given Plaintiff’s description of damages sought (pecuniary damages for surviving spouse and beneficiaries, conscious pain and suffering, death, etc.) it is plausible that the amount in controversy exceeds the jurisdictional requirement.
12. The amount in controversy requirement is met because a fact finder might legally conclude that the damages at issue exceed \$75,000.00.

**C. All Other Requirements Have Been Complied With**

13. Pursuant to 28 U.S.C. § 1446(d), Union Pacific has given written notice of the Notice of Removal to the adverse party and has filed a copy of the notice with the clerk of the Circuit Court of Whiteside County, Illinois. A true and correct copy of Defendant Union Pacific Notice of

Filing of Notice of Removal is attached as Exhibit B.

14. Pursuant to 28 U.S.C. § 1446(a), a copy of the following process, pleadings, and orders that were served upon the Defendant or filed in the state court action are attached as follows:

**Exhibit A** Plaintiff's Complaint

**Exhibit B** Defendant Union Pacific's Notice of Filing of Notice of Removal with Whiteside County.

15. The instant action is being removed to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a).

Dated: July 28, 2022

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the above and foregoing instrument was properly forwarded to all counsel of record as listed below by:

- ☐ United States Mail, postage prepaid and sealed;
- ☐ United States Certified Mail, postage prepaid and return receipt requested;
- ☐ Hand Delivery;
- ☐ UPS / Next Day Air;
- ☐ Facsimile Transmission;
- ☒ Local Rule 5.9 Electronic Filing (U.S.D.C., ND IL); and/or
- ☐ Email (pdf)

on July 28, 2022.

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/s/ Susannah Price  
Susannah Price